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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,103	07/31/2003	Anthony J. Hynes	PREC-3612	7750
S409	7590	01/11/2006	EXAMINER	
ARLEN L. OLSEN SCHMEISER, OLSEN & WATTS 3 LEAR JET LANE SUITE 201 LATHAM, NY 12110			BRINSON, PATRICK F	
		ART UNIT		PAPER NUMBER
		3754		
DATE MAILED: 01/11/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/631,103	HYNES ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Patrick F. Brinson	3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 November 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13, 15-18, 20-23, 25, 26 and 31-33 is/are pending in the application.
  - 4a) Of the above claim(s) 14, 19 and 27-30 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13, 15-18, 20-23, 25, 26 and 31-33 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7-31-03.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of claims 1-13, 15-18, 20-23, 25, 26, and 31-33 in the reply filed on 4 November 2005 is acknowledged. The traversal is on the ground(s) that inventions of figs. 1-8 and 9-11 are all of the same species. This is not found persuasive because the art of record discloses that not all metering devices require robotic positioning systems. It is clearly shown by the art that the search of a metering device that includes a robotic positioning system would require further search than that of the metering system itself.

The requirement is still deemed proper and is therefore made FINAL.

### ***Specification***

2. The disclosure is objected to because of the following informalities: The specification refers to element (60) as both a depression and a groove.  
Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 10-13, 15-18, 20, 21, 23, 25 and 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 3,990,444 to **Vial**.

The patent to **Vial** discloses a metering device including a metering element (12), operationally attached for engaging a compressible material line (22), thereby causing a selectable peristaltic effect upon a material in the compressible material line, as recited in claim 1. The device further includes a control system including an electronic timing device (23), unit (31) and motor (14), as recited in claim 2. The device includes a base (16) and the base is adapted so that the compressible material line is positioned between the base and the metering device. The base includes a depression (18) for engagement with the compressible material line. The metering device is a rotatable wheel, having an arcuate portion, as recited in claims 5 and 7. The compressible line communicates with material reservoir (2) at one end and with a dispensing needle at the other. As to the quantity of dispensed material being within 2% of the a desired quantity, **Vial** discloses an electronic eye that is placed on the dropping chamber that gives a stopping signal to the motor for every drop which passes, and for this reason the system thus designed provides an accurate measurement of the total flow since the periodicity of the movement of expulsion of liquid is exactly that of one single drop per control impulse.

4. Claims 1 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 4,671,792 to **Borsanyi**.

The patent to **Borsanyi** discloses a metering device (10) that is operationally attached for engaging a compressible material line (11). The metering element is cylindrical and is formed of a plurality of diameters, as recited in claims 8 and 9.

5. Claims 1, 6 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 4,869,457 to **Ewerlof**.

The patent to **Ewerlof** discloses a metering device (9) that is operationally attached for engaging a compressible material line (3). The metering device is both rotatable and slidable along the compressible material line, as recited in claims 6 and 22.

### *Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Borsanyi '744, '347 and '706, Kawamura et al., Flaherty et al., Lee et al. '465 and '056 and Fender et al. are all pertinent to Applicant's invention in disclosing metering devices for peristaltic effect.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Michael Y. Mar** can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Patrick F. Brinson  
Primary Examiner  
Art Unit 3754

P. F. Brinson  
January 9, 2006